Eight Mile Style, LLC et al v. Apple Computer, Incorporated

EXHIBIT 7

Declaration of Charles Ciongoli

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC and
MARTIN AFFILIATED, LLC,

Plaintiffs

vs.

APPLE COMPUTER, INC. and
AFTERMATH RECORDS d/b/a
AFTERMATH ENTERTAINMENT,

Defendants.

Case No. 2:07-CV-13164
Honorable Anna Diggs Taylor
Magistrate Judge Donald A. Scheer

______________________________/

DECLARATION OF CHARLES C. CIONGOLI IN SUPPORT OF DEFENDANTS' MOTION TO BIFURCATE DISCOVERY DAMAGES AND TRIAL

Daniel D. Quick (P48109)
Dickinson Wright PLLC
38525 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 433-7200
dquick@dickinsonwright.com

Kelly M. Klaus
Munger, Tolles & Olson LLP
355 South Grand Avenue
Suite 3500
Los Angeles, CA 90071-1560
(213) 683-9238
kelly.klaus@mto.com

Attorneys for Defendants

4983091.1

DECLARATION OF CHARLES C. CIONGOLI

I, Charles C. Ciongoli, declare as follows:

1. I am currently employed by the Universal Music Group North America as Executive Vice President and Chief Financial Officer. I have held that position or a similar position at all times relevant to this declaration. I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called as a witness.

2. I am responsible for the financial activities of Universal Music Group's North American Operations, which includes UMG Recordings, Inc. ("UMG"), the primary record company within the group. I am familiar with the practices and procedures for developing, exploiting and distributing sound recordings and the costs and revenues associated therewith. I am also familiar with the process by which UMG accounts for income and costs in connection with the sound recordings it produces, distributes and offers for sale to the public (including the sound recordings in Aftermath Records' catalogue), and the manner in which UMG and its affiliates (including Aftermath Records) keep, maintain and account for their records with respect to such income and expenses.

3. I understand this matter involves the compositions embodied in sound recordings by the immensely popular recording artist Marshall B. Mathers III (p/k/a "Eminem"). I also understand this declaration is being submitted to the Court in connection with Defendants Aftermath Records' and Apple Inc.'s motion to bifurcate damages discovery and trial in this matter. In connection with damages discovery, I understand the Plaintiffs have requested the following:

- Each and every document that shows all sales and distribution figures, revenues, expenses, profit and losses, and reserves for the sale or distribution of the sound recordings that embody the compositions in issue in any digital media.

- Each and every document showing all money or revenue earned and/or received by UMG for the sale or distribution, or the licensing for sale, distribution, or exploitation of the sound recordings that embody the compositions in issue in any digital media.
- All documents referencing or showing any of UMG's costs related to the downloading or streaming of sound recordings that embody the compositions in issue.

4. Plaintiffs' requests for damages discovery presupposes that UMG maintains profit and loss analyses by individual album or recording titles, or that these analyses could be easily produced. UMG does not maintain such analyses, nor can they be easily produced. The range and types of expenses UMG incurs relating to the exploitation of sound recordings embodying compositions is extensive. Costs are incurred across the entire process of creating and distributing a sound recording embodying a composition, from signing the artist to the ultimate distribution of product to an end-user. Records of particular categories of costs for songs, albums, or artists cannot be culled automatically from a computer database; they have to be compiled manually by UMG's employees from the massive volume of information described in paragraphs 5-7 below.

5. The scope and quantity of accounting documentation involved in the creation of and exploitation of a sound recording embodying a composition is significant. It is not limited to the ultimate distribution of a sound recording embodying a composition in digital format to an end user, as Plaintiffs' discovery requests assume. The process of releasing a sound recording embodying a composition is an extremely lengthy and involved process that involves a number of categories of both income and expenses. At each stage of this process, UMG accounts for and records each source of income and cost. Dozens (if not hundreds) of broad categories of income

and expense records are generated in connection with a single album. And for each of those categories, there may be literally hundreds, if not thousands, of pages of individual records.

6. For a typical album, I would estimate that tens of thousands of pages of income and expense records are generated. Such records may include:

a. Signing an Artist: There are a large number of attendant expenses in connection with the signing of an artist and execution of a recording agreement. These include legal expenses, A&R ("artist and repertoire") expenses, signing costs, and other miscellaneous transaction costs associated with the negotiation, drafting, and ultimate execution of the recording agreement. Documents reflecting those expenses may include correspondence, legal invoices, vouchers evidencing advances paid to artists, and receipts for travel, meals or entertainment.

b. Creating an Album: While normally the record label is not involved in the creative process (i.e., the creation of the sound recording embodying a composition), it does provide the funding for the recording process. For example, an artist will submit a production budget which will include estimated costs for studio time, musicians, producers, and equipment rental. Once the budget is approved by the record label, the artist's manager will submit purchase orders or invoices for these services or goods and the record label will ensure that these costs are paid. These expenditures are set up as an album project and assigned a project number. The files containing the back-up documents for these expenditures (e.g. purchase orders, invoices, etc.) are also maintained according to that project number. The summary of these expenditures are reflected on the artist royalty statements. Thus, these expenses cannot be traced to a specific composition, but rather only to the project number assigned to the artist for that album. The production and creation of an album is usually an expensive process, and there are often a large number of documents reflecting those costs. Although it would be difficult to catalog each and every type of expense, among the documents that may be generated in connection with the initial production of the album are: correspondence with studios or talent; studio invoices for in-studio session time; invoices, receipts, or purchase orders for the purchase or rental of musical or technical equipment; travel receipts; catering receipts; records reflecting monies paid to any person employed to assist with the production or recording of an album (including producers, technicians, or other assistants); budgets; checks reflecting any payment made to any person in connection with these expenses; and checks, correspondence, invoices, or royalty statements reflecting payments made on any mechanical or other license.

c. Post-Recording Marketing: After an album has been recorded, executives at the record label will determine whether the album is commercially viable. If approved, the record label will pay any remaining advances to the artist. At this point, the record label's marketing department is enlisted to prepare a complete media package to launch the release of the album, including, but not limited to, artist photo shoots, graphic designs for the CD cover, and the selection of the first single release. In connection with the release of the first single on an album, there are also costs relating to video production (including payments to video production companies; for talent, props, filming and editing; for the use of a particular location, and for any post-production work); tour support; and a host of advertising and other promotional expenses (ranging from expenses incurred in connection with the creation of the advertisement such as photo shoots and artwork, to the creation and distribution of promotional materials such as in-store displays, promotional copies of records and posters, to the costs associated with placing an advertisement in a newspaper or magazine). The record label may maintain expense records related to all aspects of the marketing process, including, without limitation, invoices, checks, receipts, requisition requests, correspondence, and promotional materials. For any single record, this may amount to thousands of pages of documents.

d. Marketing, Promotion, and Distribution, including Digital Activity: Part of the marketing process is to promote a single and develop interest in the artist and the album. To accomplish this goal, the marketing and promotion departments conduct meetings nationwide with popular radio and television stations and the sales department meets with retailers to promote the album release and solicit orders for the album. Albums or songs are also available for distribution through digital means, such as sales of downloadable music files over the internet or licenses to stream music or music videos on the internet. As an album or single is made available for digital exploitation, the record label will receive periodic accountings and payments from any digital, mobile, or internet company that has an agreement to sell or exploit such content. The accounting statements that are received are manually uploaded to various computer systems and are generally summarized on a monthly basis. The accounting statements are organized by the distributor or retailer (e.g., Apple iTunes) and the back-up documentation for the accounting statements are also maintained according to retailer. The company can receive over a hundred accounting statements a month that have thousands of song level reported activity.

7. In order to fairly account for all profits and losses that relate to the distribution of the sound recordings embodying the compositions in issue in digital format, all of the costs that go toward this activity, from creation to ultimate distribution, would have to be included. The process of gathering all of the information described above would be labor intensive and would be complicated because of the various different locations where necessary records are retained.

8. Based on my experience with UMG's practices and procedures, I believe that the process of searching for and compiling the documents reflecting the profits and losses that relate to the distribution of the sound recordings embodying the compositions in issue in digital format would consume hundreds of hours (if not more) of UMG employee time over an extended period of time. This work, and the time commitment associated with this work, would be on top of these employees' daily job responsibilities.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 8th day of May, 2008 at Santa Monica, California.

Charles C. Ciongoli

CERTIFICATE OF SERVICE

I hereby certify that on _______________, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the all counsel.

s/Daniel D. Quick
Daniel D. Quick (P48109)
Dickinson Wright PLLC
38525 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 433-7200
dquick@dickinsonwright.com